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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR PIMENTAL,

Defendant and Appellant.

F058303

(Super. Ct. Nos. 08CM3452 & 05CM0707)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Dawson, Acting P.J., Kane, J., and Poochigian, J.

## STATEMENT OF THE CASE

On February 3, 2009, appellant, Cesar Pimental, was charged in an information with grand theft (Pen. Code, § 487, subd. (a), count 1)<sup>1</sup> and obtaining the same property by fraud (§ 532, subd. (a), count 2). The information alleged a prior prison term enhancement.

On July 2, 2009, appellant entered into a plea agreement wherein he would admit count 1, count 2 would be dismissed, the enhancement would be dismissed, and appellant would receive a stipulated prison sentence of two years. The trial court advised appellant of the consequences of his plea and his constitutional rights pursuant to *Boykin/Tahl*.<sup>2</sup> Appellant admitted the underlying factual basis for his plea.<sup>3</sup> Appellant waived his rights, including his right to appeal, and pled guilty to count 1.<sup>4</sup> The remaining allegations in the information and those in a new, unrelated action were dismissed.<sup>5</sup>

Appellant agreed to immediate sentencing. The court sentenced appellant to a prison term of two years on count 1, granted applicable custody credits, and imposed a

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Penal Code.

<sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

<sup>3</sup> At the preliminary hearing, an investigating officer testified that he was contacted by an official of the Educational Employees Credit Union in Hanford on September 19, 2008. The bank official explained that appellant had deposited a check for \$5 that had expired and was not made out to him. Appellant apparently stated the amount of the deposit was \$3,505 when he deposited the check in an ATM. Appellant was given immediate credit for the funds. Appellant proceeded to spend large sums of money using his ATM card at Wal-Mart and other locations. The bank official testified appellant had a balance of \$414.73 before depositing the check with a deposit slip stating the deposit was for \$3,505. The amount of withdrawals appellant made that day came to \$1,850.13.

<sup>4</sup> Appellant also pled guilty to a misdemeanor allegation of battery (§ 243, subd. (b)) in an unrelated action, case No. 09CM1698.

<sup>5</sup> The dismissed action was case No. 09CM1109. Appellant's probation was revoked in an earlier, unrelated action in case No. 05CM0707.

restitution fine. The court ordered appellant's sentence in the unrelated misdemeanor action to run concurrently with his prison term.

Appellant did not obtain a certificate of probable cause and filed a timely notice of appeal. An amended abstract of judgment reflecting extra custody credits was filed on December 4, 2009.

### **APPELLATE COURT REVIEW**

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on October 14, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.<sup>6</sup>

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<sup>6</sup> The Legislature amended section 4019 effective January 25, 2010, to provide that any person who is not required to register as a sex offender, and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody.

This court, in its "Order Regarding Penal Code section 4019 Amendment Supplemental Briefing" of February 11, 2010, ordered that in pending appeals in which the appellant is arguably entitled to additional conduct credit under the amendment, we would deem raised, without additional briefing, the contention that prospective-only application of the amendment violates the intent of the Legislature and equal protection principles. We deem these contentions raised here.

We explained in the recent case of *People v. Rodriguez* (March 1, 2010, F057533) \_\_ Cal.App.4th \_\_ [pp. 5-12], however, that the amendment is not presumed to operate retroactively and does not violate equal protection under law. Appellant is, therefore, not entitled to additional conduct credit under the amendment to section 4019.

## **DISPOSITION**

The judgment is affirmed.